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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,334	08/26/2003	Yasuo Tamura	1614.1359	3539
21171	7590	05/21/2007		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER MUSSELMAN, TIMOTHY A	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/647,334		TAMURA ET AL.	
	Examiner		Art Unit	
	Timothy Musselman		3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 25 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

In response to the amendment filed 1/25/2007, claims 1-10 are pending.

Claim Objections

Claims 4-5, 7, and 9 are objected to for their references to an 'examiner terminal'. Based on the context of the term in the claims, and the lack of any previous disclosure for an 'examiner terminal', it is believed that these are typographical errors, and will be treated as 'examinee terminals' for the purpose of this office action, which is what it is believed that the claim language was intended to read.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-8 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

[1] Claim 7 is explicitly defined as a computer program. Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Also see MPEP 2106. Claim 8 is rejected for its incorporation of the above through its dependency.

Claim Rejections - 35 USC § 103

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The following is a quotation of the relevant portion of 35 U.S.C. 103 that forms the basis for the rejections made in this section of the office action;

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toshiya et al. (Japanese pub# 2001-273375) in view of Funk et al. (US 5,937,162).

[2] Regarding claims 1-10, Toshiya discloses a method and system for transmitting pass/fail information indicating whether an examinee has passed or failed an exam to an examinee terminal via a network. See paragraph 0001.

Toshiya further discloses transmitting an inquiry mail to the examinee terminal asking whether to require the pass/fail information, receiving a response mail from the examinee terminal responding to the inquiry mail, and sending the address where the pass/fail information is located to a plurality of terminals, including the examinees [claims 1-10]. See paragraphs 0002, 0003, 0017-0020, and 0026. Note that these citations describe the system emailing an HTML document with the address information of the pass/fail info, which the user subsequently responds to in order to open the pass/fail information at the appropriate network address.

Toshiya further discloses determining a response order of the emails based on the reception time of the email [claims 1, 5, 7, 9]. See paragraphs 0002, 0003, and 0017-0020. Note that the system describes providing the results based on users responding to system emails. Thus, the response order is automatically based on the user's response time, because the system sends the user an email, to which

the user responds to get the information. Since the reply to the system leads directly to the pass/fail information, the user's response is thus what determines the transmission order of the location of the pass/fail result.

Toshiya fails to explicitly teach of recording the email response time [Claims 1, 5, 7, 9]. However, examiner takes OFFICIAL NOTICE that time stamping emails is old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to record the time of the responses in order to provide an accurate log of system email activity.

Toshiya fails to teach wherein the transmissions are based on the monitored load of the server [Claims 1, 5, 6-10]. However, Funk discloses a system for mass emailing that includes adjusting email queues when the load is above a predetermined value. See col. 13: 48-62. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the load monitoring aspects and adjustments of Funk in the system of Toshiya, so as to increase the transmission efficiency of the system.

Toshiya further discloses transmitting to the examinee terminal an inquiry asking whether the particular examinee wishes to disclose their pass/fail information to other examinees, based on profile information of the examinees, the group including the particular examinee, and transmitting pass/fail information to the examinees of the group to the examinee terminal of the particular examinee [Claim 4]. See paragraph 0026.

Although Toshiya discloses transmitting, in response to the transmission request, passing information of a plurality of passing examinees around the particular examinee that sent the request (see paragraph 0026), Toshiya fails to explicitly teach wherein the passing information is distributed based on the examinee ID number [Claim 3]. However, Funk teaches of using numbers to organize data. See col. 13: 17-26. It would have been obvious to utilize the numbering techniques of Funk in the system of Toshiya, so as to allow for easy identification and organization of the database.

Response to Arguments

Examiner concurs that claims 1-4 as currently amended are sufficiently tangible to overcome the previous rejection under 35 U.S.C. 101, and the rejection is withdrawn. Applicant's further arguments filed 1/25/2007 have been fully considered but they are not persuasive. Applicant argues that Toshiya does not provide pass/fail information to examinees about *other* examinees. However, in the lower half of paragraph 26, Toshiya describes wherein the user profiles contain information about transmitting test results to third party individuals. Additionally note that since all users can do this, they constitute a 'group' as per claim 4. Further arguments are moot in view of the new grounds of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

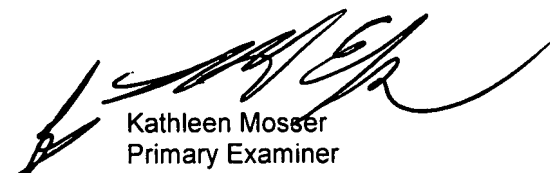
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto, can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Kathleen Mosser
Primary Examiner
Art Unit 3714